

Federal Acquisition Regulation

52.245-16

CONTRACT PURPOSE (NONPROFIT EDUCATIONAL INSTITUTIONS) (APR 1984)

This facilities use contract is designed specifically for nonprofit educational institutions to set forth provisions for the use and accountability of facilities furnished or acquired under related contracts identified elsewhere herein. There are no funds provided under this contract. Costs incurred for acquisition, maintenance, repair, replacement, disposition, or other purposes in connection with the facilities accountable hereunder will be subject to the reimbursement provisions of the related contracts; *provided*, however, that should no other contract be available for reimbursement of such costs, this contract may be appropriately modified to provide for such reimbursement.

(End of clause)

52.245-13 Accountable Facilities (Nonprofit Educational Institutions).

As prescribed in 45.302-7(b), the contracting officer may insert the following clause in solicitations and contracts when a facilities contract is contemplated and award may be made to a nonprofit educational institution:

ACCOUNTABLE FACILITIES (NONPROFIT EDUCATIONAL INSTITUTIONS) (APR 1984)

The facilities accountable under this contract are those facilities furnished or acquired under this contract and those facilities furnished or acquired under those related contracts that are specifically identified in this contract Schedule.

(End of clause)

52.245-14 Use of Government Facilities.

As prescribed in 45.302-7(c), the contracting officer may insert the following clause in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution:

USE OF GOVERNMENT FACILITIES (APR 1984)

The Contractor may use the facilities without charge in performing—

(a) Contracts with the Government which specifically authorize such use without charge;

(b) Subcontracts of any tier if the Contracting Officer having cognizance of the prime contract has authorized, in writing, use without charge; and

(c) Other work for which the Contracting Officer has specifically authorized use without charge in writing.

(End of clause)

52.245-15 Transfer of Title to the Facilities.

As prescribed in 45.302-7(d), insert the following clause:

TRANSFER OF TITLE TO THE FACILITIES (JUNE 2003)

(a) The Contracting Officer may, at any time during the term of this contract and acting under Public Law 97-258 (31 U.S.C. 6306), transfer title to equipment to the Contractor upon mutually agreeable terms and conditions. This clause takes precedence over the title paragraph of the Government property clause of this contract. However, every agreement to transfer title to equipment shall provide that the Contractor will not include in the contract price or charge the Government in any manner for depreciation, amortization, or use of such equipment.

(b) Vesting title under paragraph (a) above is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the contractor accepts and agrees that—

No person in the United States or its outlying areas shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment).

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 26905, June 28, 1985; 68 FR 28087, May 22, 2003]

52.245-16 Facilities Equipment Modernization.

As prescribed in 45.302-7(e), insert the following clause:

FACILITIES EQUIPMENT MODERNIZATION (APR 1985)

(a) The Contractor agrees to return to the Government the net cost savings realized from using modernized or replacement equipment provided by the Government under this contract. This applies to using such equipment on any contracts or subcontracts that are firm-fixed price, or that are fixed-price with economic price adjustment provisions, entered into within the 3 years following the date such equipment is placed into production. This provision does not apply to the use of such equipment in sealed bid contracts entered into after the equipment is placed in production or in contracts or subcontracts that specifically provide that they have been priced on the basis of anticipated use of such equipment.

(b)(1) The Contractor shall maintain adequate records for implementing this clause. The Contractor shall make such records available at its office for inspection, audit, or reproduction by any authorized representative of the Contracting Officer.

(2) When the Contractor authorizes a subcontractor to use the modernized or replacement equipment, the subcontractor shall be required to maintain records and make them and additional information available to the Contracting Officer.

(c) Records of equipment shall generally be acceptable if they are maintained under established accounting practices and permit a fair estimation of the net cost savings realized. Net cost savings realized shall be determined by a comparison of the Contractor's cost experience in the operation of the equipment before and after modernization.

(d) Amounts due the Government under this clause shall be returned by the Contractor, as directed by the Contracting Officer, by—

(1) Credits to, or adjustment of the prices of, the related contracts benefitting from using the modernized or replacement equipment;

(2) Payment to the Government through the Contracting Officer having cognizance of the equipment; or

(3) Any other means mutually agreed to.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1748, Jan. 11, 1985; 50 FR 52434, Dec. 23, 1985]

52.245-17 Special Tooling.

As prescribed in 45.306-5, insert the following clause:

SPECIAL TOOLING (MAY 2004)

(a) *Definition.* *Special tooling* means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacements of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items. Special tooling for the purpose of this clause, includes all special tooling acquired or fabricated by the Contractor for the Government (other than special tooling to be delivered as a line item) or furnished by the Government for use in connection with and under the terms of the contract.

(b) *Title.* The Government retains title to Government-owned special tooling and option to take title to all special tooling subject to this clause until such time as title or option to take title is relinquished by the Contracting Officer as provided for in subparagraphs (j)(2) and (j)(3) of this clause.

(c) *Risk of loss.* Except to the extent that the Government shall have otherwise assumed the risk of loss to special tooling applicable to this clause, in the event of the loss, theft or destruction of or damage to any such property, the repair or replacement shall be accomplished by the Contractor at its own expense.

(d) *Special tooling furnished by the Government.* (1) Except as otherwise provided in this contract, all Government-furnished special tooling is provided *as is*. The Government makes no warranty whatsoever with respect to special tooling furnished *as is*, except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when last available for inspection by the Contractor under the solicitation.

(2) The Contractor may repair any special tooling made available on an *as is* basis. Such repair will be at the Contractor's expense, except as otherwise provided in this clause. Such property may be modified as necessary for use under this contract at the Contractor's expense, except as otherwise directed by the Contracting Officer. Any repair or modification of property furnished *as is* shall not affect the title of the Government.

(3) If there is any change in the condition of special tooling furnished *as is* from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation or the Government directs a change in the quantity of special tooling furnished or to be furnished, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the facts, and, as directed by the Contracting Officer, either (i) return such items at the Government's expense or otherwise dispose of the property or (ii) effect repair to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of special tooling in a condition or in quantities other than that when originally offered.